

MELINDA HAAG (CABN 132612)
United States Attorney

J. DOUGLAS WILSON (DCBN 412811)
Chief, Criminal Division

ACADIA L. SENESE (CABN 251287)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7200
FAX: (415) 436-7234
acadia.senese@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)	NO. CR 12-0119 SI
)	
v.)	UNITED STATES' SENTENCING
)	MEMORANDUM
JOSEPH ORTIZ,)	
)	
Defendant.)	
)	November 7, 2013 at 11:00 a.m.
)	Honorable Susan Illston

I. Introduction

The defendant, Joseph Ortiz, pled guilty pursuant to a plea agreement under Fed. R. Crim. P. 11(c)(1)(A) and 11(c)(1)(B) to all twenty-five counts charged against him in the Second Superseding Indictment CR 12-0119-SI. This Court set November 7, 2013, at 11:00 a.m. as the date for judgment and sentencing. The defendant stands before the Court having pled guilty to, among other crimes, three murders, seven attempted murders, two armed robberies, and obstructing justice in the investigation of the triple homicide. The government submits the following sentencing memorandum in order to advise the Court of the government's Guidelines calculation and its sentencing recommendation. For the reasons set forth below, the government respectfully requests that the Court sentence the defendant to

United States' Sentencing Memorandum
CR 12-0119 SI

1 five consecutive life terms plus 60 years.

2 **II. Guidelines Calculation**

3 The parties have set forth their understanding of the applicable Guidelines calculation in the
4 written plea agreement. *See* Plea Agt. ¶¶ 7, 8. The parties agree that the defendant's Combined
5 Offense Level is 43. *Id.* The parties have not reached an agreement as to the defendant's Criminal
6 History Category; however, the government does not dispute the Probation Department's calculation
7 which results in fifteen criminal history points and Criminal History Category VI. PSR ¶ 209.

8 **III. The Defendant's Criminal Conduct**

9 The defendant is a violent gang member who participated in the racketeering activities --
10 including murder, attempted murder, and robbery -- of the 500 Block/C Street gang, a gang which
11 claims allegiance to the *Nuestra Familia* prison gang. His criminal conduct increased with severity as
12 the defendant grew older, served periods of incarceration, and became more involved with gang activity;
13 indeed, the defendant's role in shooting and wounding six victims on December 22, 2010, resulting in
14 the death of three of those young men, occurred just days after the defendant was released from jail for a
15 violent gang-related stabbing. The defendant is deeply involved in the gang and clings to his allegiance
16 to *Nuestra Familia*. This allegiance is evidenced not only by his multiple law enforcement contacts in
17 which he was wearing red, loitering in 500 block territory, or admitting his own membership in the gang
18 to law enforcement, but by "kites" intercepted in jail facilities. Those kites reflect the defendant's desire
19 to elevate his status within the gang while he is in federal prison, as well as indicate that the defendant
20 held status within the gang on the streets to the extent that he was allowed to make decisions and
21 discipline younger "homies," *i.e.*, gang members. In short, the defendant is committed to being a
22 "Northerner," and participating in the crime and violence which that lifestyle glorifies.

23 **A. Armed Robberies**

24 In April 2010, the defendant committed two armed robberies. The first robbery occurred on
25 April 5, 2010 and was a takeover style robbery of a jewelry store. The defendant, wearing a hood and a
26 bandana to mask his face, brandished a firearm at the store employee and demanded cash and jewelry.
27 His co-conspirator wielded a hammer. At one point, the defendant asked the employee whether they
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1 wanted to die, at which time the employee held up an empty jewelry box, presumably to show the
2 defendant that they had nothing else to give him. The defendant and his co-conspirator then fled the
3 store with approximately \$67,500 worth of jewelry.

4 A few days later, the defendant participated in a second armed robbery. On April 9, 2010, the
5 defendant covered his face with a bandana and entered a 7-Eleven store with a firearm, which he
6 brandished at the store employee. The defendant demanded cash and property and threatened to shoot
7 the employee if he did not comply. The defendant obtained \$380 in cash.

8 **B. Attempted Murders**

9 On December 18, 2013, just days after the defendant was released from serving a sentence for a
10 gang-related stabbing, the defendant attempted to kill four people whom he suspected to be rival *Sureño*
11 gang members. The defendant walked up to a car occupied by four individuals in the parking lot at the
12 St. Francis Liquor Store in Daly City, California, and brazenly opened fire at the victims. The defendant
13 wounded three of the victims. Other than their perceived membership in a rival gang, the victims did
14 nothing to provoke the sudden, violent attack.

15 **C. Murder**

16 Four days after the attempted murders in Daly City, on December 22, 2010, the defendant, along
17 with his co-conspirators, went looking for rival gang members who the defendant believed had
18 threatened his gang territory. They drove down Eighth Lane in South San Francisco and observed a
19 group of individuals that the defendant and his co-conspirators suspected to be members of the rival
20 gang. The defendant got out of the car and fired his gun at the group of people in order to kill them.
21 The defendant and his co-conspirators shot at seven individuals, wounding six of them, three of them
22 fatally. Just as with the shootings four days earlier, the victims were essentially ambushed as they
23 walked unwittingly down the road, solely because the defendant and his co-conspirators suspected that
24 they were rival gang members.

25 **D. Obstruction of Justice**

26 Following the triple homicide on December 22, 2010, the defendant hid from law enforcement in
27 a family member's apartment for the night and agreed that someone should hide or destroy the firearms
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1 used in the shootings. The next morning, the defendant hid himself in the trunk of a fellow co-
2 conspirator's car and that person then drove the defendant out of the San Francisco Bay Area. The
3 defendant fled first to Arizona and then to Mexico to avoid arrest and prosecution in the December 22,
4 2010 murders. While in Mexico, other co-conspirators paid for his apartment and sent the defendant
5 money, so that he could continue to evade capture. The defendant also tried to persuade his girlfriend at
6 the time from cooperating with law enforcement.

7 In short, all of the defendant's conduct – from the murders to the robberies – occurred during a
8 relatively short period of time and exemplifies the danger that the defendant presents to the community.

9 **IV. Discussion**

10 **A. Applicable Sentencing Law**

11 Under the current sentencing regime, the Court must sentence in accordance with the directions
12 of 18 U.S.C. § 3553(a). Section 3553(a) provides that the sentencing “court shall impose a sentence
13 sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this
14 subsection, “and then sets forth specific considerations, including: the nature and circumstances of the
15 offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect
16 the seriousness of the offense, to promote respect for the law, and to provide just punishment for the
17 offense, to afford adequate deterrence to criminal conduct, and to protect the public from further crimes
18 of the defendant; the defendant's need for rehabilitation; the kinds of sentences available; and the
19 sentencing range under the Guidelines. 18 U.S.C. § 3553(a). On appellate review, a sentence is
20 reviewed for “unreasonableness” in light of these various factors. *United States v. Booker*, 543 U.S.
21 220, 260-62 (2005).

22 Although the Supreme Court's decision in *Booker* has rendered the Sentencing Guidelines
23 advisory, the Guidelines still remain the “starting point and initial bench-mark” for sentencing.
24 *Kimbrough v. United States*, 128 S. Ct. 558, 574 (2007) (internal quotation marks and citation omitted);
25 *see United States v. Carty*, 520 F.3d 984, 991 (9th 2008) (*en banc*); *United States v. Ellis*, 641 F.3d 411,
26 415 (9th Cir. 2011). While there is no presumption of reasonableness for a Guidelines range sentence,
27 *see Carty*, 520 F.3d at 991-992, if a district judge “decides that an outside-Guidelines sentence is
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1 warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently
 2 compelling to support the degree of the variance.” *Id.* (citing *Gall v. United States*, 128 S. Ct. 586, 597
 3 (2007); see *United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 (9th Cir. 2011) (“A district court
 4 must start with the recommended Guidelines sentence, adjust upward or downward from that point, and
 5 justify the extent of the departure from the Guidelines sentence.”).

6 A defendant convicted of a racketeering violation can be sentenced for “any act, whether or not
 7 charged against defendant personally, that qualifies as a RICO predicate under 18 U.S.C. § 1961(1) and
 8 is otherwise relevant under [U.S.S.G.] § 1B1.3.” *United States v. Carrozza*, 4 F.3d 70, 77 (1st Cir.
 9 1993) (footnote omitted); see U.S.S.G. § 1B1.3(a)(1)(B) (defining relevant conduct for sentencing “in
 10 the case of jointly undertaken criminal activity”); see, e.g., *United States v. Morales*, 655 F.3d 608, 636
 11 (7th Cir. 2011) (affirming district court sentence that was based on acts of co-conspirators because
 12 “each and every overt act of violence in connection with the Rico conspiracy, although perhaps not
 13 specifically agreed to by each and every defendant on every specific occasion, was nonetheless
 14 reasonably foreseeable to each and every defendant given the nature of their joint RICO enterprise.”)

15 **B. A Sentence of Five Consecutive Life Terms Plus 60 Years is Appropriate**

16 A sentence of five consecutive life terms plus 60 years imprisonment is an appropriate and
 17 reasonable sentence in this case. The defendant pled guilty to three murders, seven attempted murders,
 18 two armed robberies, three racketeering-related conspiracies, multiple firearms violations, and multiple
 19 offenses involving obstruction of justice. As the Probation Department aptly notes, “words cannot
 20 adequately describe the terror the defendant has caused.” The grief and suffering that the defendant has
 21 caused are reflected in the statements of the mothers of the young men the defendant killed: “I lost a
 22 part of my heart and feel guilty that I could not protect him;” “I lost my one and only son. He was a
 23 good young man. He was a good brother to my daughters.” There are no mitigating factors under 18
 24 U.S.C. § 3553(a) that would warrant a sentence to anything other than which the parties and probation
 25 have agreed: five consecutive life terms plus 60 years.

26 The defendant has chosen to continually participate in gang life since at least 2005 and has a
 27 history of contacts with law enforcement. The defendant was very involved as a Northerner throughout
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V. Conclusion

By: /s/
ACADIA L. SENESE
Assistant United States Attorney